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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/138,807	08/21/1998	RAMANATHAN RAMANATHAN	INTL-0083-US	4545
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TROP PRUNER & HU, PC 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024			EXAMINER SALCE, JASON P	
			ART UNIT	PAPER NUMBER
			2611	//
DATE MAILED: 11/05/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/138,807

Applicant(s)

RAMANATHAN, RAMANATHAN

Examiner

Jason P Salce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 7/21/03 have been fully considered but they are not persuasive.

Referring to independent claims 11 and 16, the Applicant argues that Kenner does not teach, "providing an on-going count of time elapsed". Examiner notes that the claim limitation of "providing an on-going count of bits transmitted and time elapsed from the point in time when the first marker is transmitted" is broad. The examiner is interpreting the claims to read either providing an on-going count of bits and providing a time elapsed from the point in time when the first marker is transmitted, not providing an on-going count of elapsed time. Therefore, because of the broad claim limitation, Kenner's support for calculating a round-trip elapsed time of a test packet reads on the limitation of "providing... time elapsed from the point in time when the first marker is transmitted".

Applicant also argues that there is no mention of a counter in the passages cited by the Examiner. The claim limitations do not suggest a counter in the claims, therefore this argument is moot.

Applicant also argues "Kapoor does not teach an on-going count of bits transmitted and time elapsed from the point in time when a first marker is transmitted". As disclosed in the previous Office Action, Kapoor is used to provide the missing limitation of providing an on-going count of bits, not providing time elapsed from the point in time when a first marker is transmitted. Applicant also states that Kapoor does

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not teach an on-going count of time elapsed; again, see arguments above for how the examiner is interpreting the broad claim limitation.

Applicant also argues that Kapoor fails to teach counting bits and only teaches counting data packets. Examiner notes that the limitation "on-going count of bits" is broad, and that a definition of a packet from the IEEE dictionary is "a group of binary digits including data and control elements". Therefore, Kapoor teaches counting packets, which is also counting bits, since multiple bits make a packet. Applicant also argues that Kapoor fails to teach data packets of a fixed length. This limitation is not in the independent claims (11 and 16), and therefore, this argument is moot.

Regarding arguments made in regards to independent claim 12, see arguments above for the counting packets reading on the broad limitation of on-going count of bits.

For the reasons stated above, the rejection from the previous Office Action stands, and this action is Final.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-4, 11, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Kapoor (U.S. Patent No. 5,751,969).

Referring to claims 11 and 16, Kenner discloses setting a first marker in the video transmission (see a test packet at Column 27, Lines 58-59 and note that it is inherent that all packets contain different fields (markers), and therefore the system must know the difference between a test packet and a regular video data packet, and therefore is marked as such). Therefore, Kenner sets a marker in the packet to identify the packet as a test packet.

Kenner also discloses tracking the transmission after the first marker (see Column 27, Lines 44-46 for a discussion of tracking the demand of video clips from remote clients, and Column 27, Lines 58-59 for performing this tracking by sending a test packet (which contains a marker as discussed above)).

Kenner also discloses providing a time elapsed from the point in time when the first marker is transmitted (also see Column 27, Lines 58-59 to teach that the test packet is used to calculate a round-trip elapsed time).

Kenner also discloses that this transmission (sending a test packet and calculating a response time (elapsed time) is reported to the PIM 64 (see Column 26, Lines 34-39 for a discussion of how the PIM 64 determines which SRU (local or remote) is used to obtain the desired video clip, and Column 27, Lines 50-57 for a teaching of determining the closest remote SRU 92 by the test packet technique discussed above).

Kenner fails to disclose providing an on-going count of bits transmitted. Kapoor teaches setting a first marker in a video transmission (see Column 4, Lines 52-55). Kapoor also discloses tracking the transmission after the first marker (Column 5, Lines 15-19). Kapoor also discloses reporting the transmission (Column 6, Lines 53-59).

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Kapoor continues to disclose the limitation that is unsupported by Kenner of providing an on-going count of bits (see counting the marker set in a data packet at Column 5, Lines 48-49).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the PIM 64 used to acquire a video clip from a number of different remote SRUs, as taught by Kenner, using the congestion controller, as taught by Kapoor, for the purpose of managing the network traffic through nodes (PIMs and SRUs) to avoid traffic congestion (Column 1, Lines 53-54).

Claim 2 corresponds to claim 11, with the additional limitation of receiving web content transmission and accompanying television broadcasts from a content provider. Column 2, Lines 43-67 teaches acquiring web content and also video on demand programs off the Internet. The content provider is disclosed as an ISP at Column 1, Lines 58-61). Therefore, it is inherent that web content as disclosed by Kenner can be accompanied by television broadcasts.

Claim 3 corresponds to claim 2, and additionally discloses inserting the first marker into the combined broadcast. The examiner notes the teaching in claim 11, where a packet (test packet or regular audio/video or web content packet contains a marker to identify the type of packet being transmitted). Therefore, it is inherent that a first marker exists in all packets in Kenner's system.

Claim 4 corresponds to claim 2, and additionally discloses receiving web content from a content provider (disclosed by Kenner at Column 1, Lines 58-65), combining the web broadcast content with the television programming (see rejection of claim 2) at a

broadcast encoder (PIM 64 in Figure 4) and inserting the first marker at the broadcast encoder (see Column 27, Lines 44-46).

3. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mao et al. (U.S. Patent No. 6,459,427) in view of Kapoor (U.S. Patent No. 5,751,969).

Referring to claim 12, Mao discloses an encoder that combines different transmissions (see Column 5, Lines 40-42 for a discussion of the MOREGATE™ server 80, which is capable of combining program synchronous web content onto an MPEG video stream). Mao also discloses re-assigning PID (packet ID) values (setting a marker) by the re-multiplexer 70 (see Column 5, Lines 18-24).

Mao fails to teach a counter for tracking the transmission from the point where the first marker was inserted. Kapoor teaches both setting a first marker (Column 4, Lines 52-55) as well as teach the missing limitation of a counter for tracking a transmission from the point where the first marker was inserted (Column 5, Lines 15-19 for tracking the first transmission after a first marker was set and Column 5, Lines 48-49 for incrementing a counter when a marker is detected in a packet).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the MOREGATE™ server 80, as taught by Mao, using the congestion controller 26, as taught by Kapoor, for the purpose of managing the network traffic through nodes (MOREGATE™ server 80 and set-top box 150) to avoid traffic congestion (Column 1, Lines 53-54).

Claim 13 corresponds to claim 12, with the additional limitation of a broadcast encoder coupled to a content provider. Mao discloses an HFC Headend 10 and an MPEG-2 remultiplexer 70 coupled to the HFC Headend 10 in Figure 1.

Claim 14 corresponds to claim 13, with the additional limitation of the broadcast encoder setting the first marker in the video transmission (see Column 5, Lines 18-24 for re-assigning a PID (first marker) in an MPEG stream).

Claim 15 corresponds to claim 13, with the additional limitation of the content provider setting a first marker in the video transmission (note that the HFC Headend 10 is equated to the content provider, which contains the remultiplexer 70 (broadcast encoder) coupled to the HFC Headend 10, therefore the content provider also sets the first marker).

4. Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Kapoor (U.S. Patent No. 5,751,969) in further view of Official Notice.

Referring to claim 10, Kenner and Kapoor teach all of the limitations in claim 11, but fail to teach a log-in server for allowing a third party to access transmission reporting. The examiner takes Official Notice that it would have been obvious to provide a log-in server at a remote point to allow an operator of a cable broadcasting system to monitor network activity at off-peak hours (for example when the operator is not scheduled to work).

Allowable Subject Matter

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5. Claims 5-9 and 19-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

October 20, 2003


ANDREW FAILE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600